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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.S., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.S. et al.,

Defendants and Appellants.

E064422

(Super.Ct.No. RIJ1400135)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and
Appellant, C.S.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and
Appellant, J.S.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Julie A. Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

On September 4, 2015, the juvenile court denied defendants and appellants C.S.'s (Mother) and J.S.'s (Father; collectively parents) Welfare and Institutions Code section 388¹ petitions. The court thereafter terminated parents' parental rights as to M.S. (Minor born February 2013). On appeal, parents contend the court abused its discretion by denying their petitions. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On April 12, 2013, the police arrested Father for domestic violence committed upon Mother. On April 20, 2013, the police arrested Father for child endangerment after Father engaged in a physical altercation with Minor's sibling's mother during monitored visitation. On April 29, 2013, the Los Angeles County Department of Children and Family Services (LA department) received an immediate response referral. Mother had reportedly left Minor with a friend saying she would return in a few hours. Two days later, Mother had failed to return.

Minor's maternal grandmother picked up Minor and found she had a soiled diaper, was hungry, and her clothing smelled of urine and marijuana. Mother reportedly was bipolar and had a history of prostitution and drug use. Mother had two outstanding warrants for prostitution. When Mother arrived at the maternal grandmother's home, officers arrested her.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In an interview on April 30, 2013, Mother admitted leaving Minor, but reported she had no way to pick up Minor. Mother admitted incidents of domestic violence between she and Father before, during, and after her pregnancy with Minor. Mother admitted prostitution. On May 2, 2013, Mother applied for and received a temporary restraining order against Father.

As sustained, the LA department filed a juvenile dependency petition alleging parents had a history of domestic violence (b-1), Father had engaged in a physical altercation with a female companion in the presence of Minor's sibling (b-2), and Mother had left Minor with no provision for support (b-3). On May 28, 2013, the court detained Minor.

In the jurisdictional and dispositional report filed June 5, 2013, the social worker noted Minor had been placed with the maternal grandparents on April 29, 2013. The social worker recommended Father not receive reunification services as he was not receiving reunification services for one of Minor's siblings and had had services terminated as to one of Minor's siblings. The juvenile court denied Father reunification services pursuant to section 361.5, subdivision (b)(10), removed Minor from parents' custody, and ordered reunification services for Mother.

In a status review report filed December 5, 2013, the social worker observed that Minor was doing well in placement. Mother requested visitation be moved from her parents' home to the LA department's office as her family did not get along with her boyfriend. Mother maintained consistent visitation. Mother later wanted visitation to

occur with Father, but the temporary restraining order prevented simultaneous visitation. Mother and Father were reportedly living with one another. Mother reportedly continued to engage in prostitution in which capacity Father acted as her pimp. On November 5, 2013, Father beat up Mother and took her money.

Mother participated in a 10-week parenting program and had only two sessions left to complete. Mother participated in individual counseling, but had yet to participate in domestic violence counseling as required by her case plan. Mother and Father reportedly married during the reporting period.²

In an interim review report dated January 29, 2014, the social worker reported Mother had participated in a domestic violence support group, one meeting of which she had shown up with Father. Mother had participated in counseling which addressed domestic violence issues. Mother had completed a parenting class. Parents engaged in four hours of separate weekly visitation with Minor. The social worker recommended Mother receive an additional six months of reunification services.

On January 31, 2014, the matter was transferred to Riverside County. The court granted Mother six additional months of reunification services. On February 20, 2014, the Riverside County Superior Court accepted transfer of the case and set the 12-month hearing.

In the July 18, 2014, 12-month status review report, the social worker recommended termination of Mother's reunification services. Mother was reportedly

² Mother later reported marrying Father on December 31, 2013.

pregnant with a due date of November 21, 2014. Mother was unsure whether Father was the father as she had resumed a relationship with another man. Parents' whereabouts were unknown at the time. Mother failed to enroll in domestic violence treatment and parenting programs to which she had been referred.

Mother had engaged in four-hour weekly visitation with Minor during which she was observed to be engaged and attentive. Mother and Minor were described as affectionate with one another. The visits were deemed appropriate.

Father had weekly visitation with Minor in which Father was observed to engage actively with Minor. However, reports indicated parents were asked to vacate their residence on April 30, 2014, as the landlord felt threatened by them. Father's last visit with Minor occurred on April 17, 2014; Mother's was on April 21, 2014. Mother had been located on July 7, 2014, but failed to respond to the social worker's communications.

The social worker reported Minor "made a very positive adjustment to out of home placement in the home of her maternal grandfather. Also residing in the home are [Minor's] maternal aunt and uncle by marriage. [Minor] is very happy in the home and she is the center of attention and very beloved. The caregiver ensures that her medical, developmental and emotional needs are consistently met. She is healthy and developmentally on track. She has ample space and supplies in the home and she is included in all family activities and outings. The maternal aunt and her spouse are

willing and able to provide [Minor] with permanency through adoption should reunification efforts fail with the parents.”

Minor “has a strong emotional attachment to her maternal grandparents, aunt and uncle. Additionally, I observed a bond between the child and the parents during supervised visits; however, the [F]ather and [M]other have not made themselves available to see the [Minor] since April 17, 2014, and April 21, 2014, respect[ively]; therefore, I am unable to assess the current attachment between the [Minor] and the parents.”

Parents failed to appear at the 12-month hearing on August 7, 2014. The juvenile court terminated Mother’s reunification services and set the section 366.26 hearing.

In the report filed November 20, 2014, the social worker requested a 120-day continuance to conduct a prospective adoptive assessment. Parents had resumed visitation with Minor, which they maintained consistently once monthly; however, visitation had not been liberalized due to Mother’s noncompliance with her case plan. Moreover, “due to [Father’s] volatile and aggressive behavior at Court, visits are also attended by a Specialized Investigations Unit Officer to ensure the safety of [the department] staff and of the [Minor].”

Upon resumption of visitation, Minor appeared comfortable with Mother, but was apprehensive with Father: Minor “demonstrated distress when [Father] began his visit. [Minor] cried and was inconsolable during the first 15 minutes of [Father’s] visit.” Parents had moved to Nevada.

The social worker observed Minor “demonstrates emotionally healthy attachments to her maternal grandparents as well as to her maternal aunt and uncle.” Minor “is very emotionally attached to the family and she looks to them for nurturance, consistent care, stability and security.”

On December 4, 2014, the juvenile court continued the matter for 120 days. On March 6, 2015, the social worker filed an addendum report requesting an additional 60-day continuance for the preliminary adoptive assessment. The social worker observed Minor had a “strong emotional attachment” to the prospective adoptive parents and extended family members who lived in the home. On April 3, 2015, the court granted the continuance.

In the report filed May 29, 2015, the social worker recommended the court terminate parents’ parental rights and order adoption as the permanent plan. The Department of Family Services in Nevada had opened an investigation into Parents and their then six-month-old child. Parents visited Minor from Nevada, traveling to California at the end of each month so that they could receive two of their monthly visits in one trip. Minor cried during visitation, but parents were calm and attentive to Minor.

Minor had been officially placed with the maternal aunt and uncle on October 1, 2014, even though she had resided with them since initially placed with the maternal grandparents on April 29, 2013. The social worker observed that Minor “appears to be thriving emotionally, physically and developmentally and receives a lot of love and attention from the” prospective adoptive parents.

On June 9, 2015, Mother filed a section 388 petition alleging she had completed her entire case plan and continued to participate in voluntary services in Nevada. Mother requested placement of Minor with her under family maintenance services or reinstatement of reunification services. Mother asserted she visited consistently and had a very strong bond with Minor, who wished to know her baby brother.

Father filed a section 388 petition on June 10, 2015. Father asserted he had completed counseling, parenting, and domestic violence services on his own. Father requested placement of Minor with him and termination of the dependency case. In the alternative, Father requested reunification services with authorization for placement with family maintenance services. Father averred he maintained regular visitation with Minor, had a bond with Minor, and wanted Minor to have a bond with parents. On June 11, 2015, the court continued the matter for three weeks in order for the department to prepare a response to the petitions.

On July 6, 2015, the social worker filed an addendum report in which she recommended the court deny parents' petitions. The social worker noted that although parents' visitation with Minor was appropriate, there was a "very high" risk of detriment to Minor if she were placed with parents. Minor had been placed in the prospective adoptive parents' home when she was an infant and she was now 28 months old: "It is not in the best interest of the child to leave the only home she has known. She is attached to the prospective adoptive parents, [as] well as their" children.

On August 31, 2015, the prospective adoptive parents requested de facto parent status. The court granted the request.

On September 4, 2015, the juvenile court held a combined sections 388 and 366.26 hearing. A licensed clinical social worker and qualified mental health provider testified he began providing treatment for parents on a weekly basis in October 2014. He had no concerns regarding their ability to parent Minor. The juvenile court denied parents' petitions and terminated their parental rights.

II. DISCUSSION

Parents contend the juvenile court abused its discretion by denying their section 388 petitions. We disagree.

“After the termination of reunification services, a parent’s interest in the care, custody and companionship of the child is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.] In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child [citation]; such presumption obviously applies with even greater strength when the permanent plan is adoption rather than foster care.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

“This determination [is] committed to the sound discretion of the juvenile court, and the trial court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.] As one court has stated, when a court has made a custody determination in a dependency proceeding, ““a reviewing court will not disturb

that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.] And we have recently warned: “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Here, the juvenile court determined parents had made a showing of changed circumstances: “I will indicate that the parents’ witness that they brought forward here, I think he’s very credible. I think the services have been provided to the parents, whether it would have been court-ordered or not, are very, very extensive services. I think it’s more than just changing. I think the parents have changed their circumstances from when they came before the Court. . . . There’s extensive effort on the parents’ part here with regards to the services, and it pretty much was equivalent of a case plan that would have been completed here in California. So I don’t think the first prong is the issue. I think the parents’ circumstances have changed”

Nevertheless, the juvenile court found that reinstating reunification services was not in the best interest of Minor: “I think, really, the second prong is the one that the Court struggles with. When you look at a best interest of a child, this child’s been out of the home since very, very young, and when I look at the history of this case and I look at

even any liberalization of any visitation, anything like that, that never happened over the life of the case, when it was able to be done. . . . [T]here was a period of time where there was . . . absolutely no visitation either, and when I look at the length of time that this child has been out of the home, it's almost her entire life. . . . I can't get to a best interest with this minor child in granting this motion." The record fully supports the court's findings.

Here, Minor was placed in the home of the prospective adoptive parents on April 29, 2013, when she was only two months old. Minor had continually lived with the prospective adoptive parents and the maternal grandparents for the ensuing 28 months. The social worker reported Minor had a "strong emotional attachment," a "significant attachment," a "strong mutual attachment," and was "very emotionally attached" to the prospective adoptive parents and extended family members living within the home. Minor's daily needs were met by the prospective adoptive parents and the maternal grandparents in whose home Minor thrived. The social worker opined a "very high" probability Minor would suffer detriment if removed from the prospective adoptive parents' home.

Although parents were observed to have a bond with Minor early on, parents' later missed four months of visitation. When visitation resumed, Minor demonstrated distress and cried inconsolably when with Father. The court acted within its discretion in determining that it was not in Minor's best interest to grant parents' section 388 petitions.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.